

111th Congress
1st Session

H. RES. _____

Providing for consideration of the bill (H.R. 1664) to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.

IN THE HOUSE OF REPRESENTATIVES

March 31, 2009

Mr. Perlmutter, from the Committee on Rules, reported the following resolution which was referred to the House Calendar and ordered to be printed.

RESOLUTION

Providing for consideration of the bill (H.R. 1664) to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1664) to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. All points of order against the committee amendment in the nature of a substitute are waived except those arising under clause 10 of rule XXI. Notwithstanding clause 11 of rule XVIII, no amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived except those arising under clause 9 or 10 of rule XXI. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the

Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

111th Congress }
1st Session }

HOUSE OF REPRESENTATIVES

{Report
{
{No. ____

Providing for consideration of the bill (H.R. 1664) to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.

March 31 2009. --Referred to the House Calendar and ordered to be printed

Mr. Perlmutter, from the Committee on Rules
submitted the following

REPORT

[To accompany H. Res. ____]

The Committee on Rules, having had under consideration House Resolution ____, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1664, to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute except for clause 10 of rule XXI. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The rule makes in order only those amendments printed in this report. The amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments except for clauses 9 and 10 of rule XXI are waived. The rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI) includes a waiver of clause 4(a) of rule XIII, requiring a three-day layover of the committee report. Although the rule waives all points of order against the amendment in the nature of a substitute (except clause 10 of rule XXI), the Committee is not aware of any points of order. The waiver of all points of order is prophylactic.

**SUMMARY OF AMENDMENTS TO BE MADE IN ORDER
(summaries derived from information provided by sponsors)**

- 1. Frank (MA)**

Would provide further clarification that an institution does not become subject to the limitations on compensation in this bill as a result of doing business with an institution that has received a direct capital investment under either the TARP or HERA. Would exempt severance pay from coverage if the payment is made in the ordinary course to an employee who has been with the institution at least 5 years prior to dismissal, as long as that payment is not greater than the employee's annual salary or \$250,000. Would require the compensation data that an institution must report annually to the Treasury to include contributions made for the benefit of an employee's immediate family members. Would create a Commission on Executive Compensation to study the executive compensation system for recipients of direct capital investments under the TARP and make recommendations for legislative and regulatory action.

(20 minutes)
- 2. Cardoza (CA)**

Would allow the Treasury Secretary to exempt financial institutions receiving TARP funds under a certain threshold.

(10 minutes)
- 3. Meeks, Gregory (NY)**

Would exempt from compensation standards any institutions that receive TARP funding or payment agreements entered into before the enactment of this bill.

(10 minutes)
- 4. Bean (IL)/
McMahon (NY)**

Would allow institutions that enter into a payment schedule with Treasury on terms set by Treasury to no longer be subject to the bonus and compensation restrictions created by the Act. If an institution defaults on its payment schedule, any bonuses and compensation that exceeds the regulations promulgated in accordance to the Act would be subject to clawback.

(10 minutes)
- 5. Bilirakis (FL)**

Would clarify that an institution that is not a TARP recipient will not be subject to the requirements of the bill as a result of doing business with a TARP recipient.

(10 minutes)
- 6. DeFazio (OR)**

Would amend the Emergency Economic Stabilization Act of 2008 to make the shareholder vote on executive compensation packages binding upon the board of directors.

(10 minutes)
- 7. Dahlkemper (PA)**

Would clarify the definition of executive compensation to include payments made before, during and after employment, and would make explicit that the definition of compensation considered under the standards to be prepared by the Secretary to include payment of money, transfers of property or provision of services.

(10 minutes)

TEXT OF AMENDMENTS TO BE MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
Frank OF Massachusetts, OR HIS
DESIGNEE, DEBATABLE FOR 20 MINUTES:

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**AMENDMENT TO H.R. 1864, AS REPORTED
OFFERED BY MR. FRANK OF MASSACHUSETTS**

In subsection (e)(1) of the matter proposed to be inserted by section 1(a) of the bill, in the matter following subparagraph (B), strike "nothing in this paragraph" and all that follows through "under the TARP" and insert "an institution shall not become subject to the requirements of this paragraph as a result of doing business with a recipient of a direct capital investment under the TARP or under the amendments made by the Housing and Economic Recovery Act of 2008".

In subsection (e) of the matter proposed to be inserted by section 1(a) of the bill, redesignate paragraph (3) as paragraph (4) and insert after paragraph (2) the following:

1 “(3) CLARIFICATION RELATING TO SEVERANCE
2 PAY.—For purposes of this subsection, a compensa-
3 tion payment or compensation payment arrangement
4 shall not include a severance payment paid by an
5 employer in the ordinary course of business to an
6 employee who has been employed by the employer
7 for a minimum of 5 years upon dismissal of that em-

1 ployee, unless such severance payment is in an
2 amount greater than the annual salary of such em-
3 ployee or \$250,000.”.

 In the matter proposed to be inserted by section
1(a) of the bill, in subsection (e)(4)(B) (as redesignated
by the previous amendment), insert before the period the
following: “or for the benefit of that person’s immediate
family members”.

 At the end of the bill, insert the following new sec-
tion:

4 **SEC. 2. EXECUTIVE COMPENSATION COMMISSION.**

5 Section 111 of the Emergency Economic Stabilization
6 Act of 2008 (12 U.S.C. 5221), as amended by section 1,
7 is further amended by adding at the end the following new
8 subsection:

9 “(j) EXECUTIVE COMPENSATION COMMISSION.—

10 “(1) ESTABLISHMENT.—There is hereby estab-
11 lished a commission to be known as the ‘Commission
12 on Executive Compensation’ (hereinafter in this sub-
13 section referred to as the ‘Commission’).

14 “(2) DUTIES.—

15 “(A) STUDY REQUIRED.—The Commission
16 shall conduct a study of the executive com-
17 pensation system for recipients of a direct cap-

1 ital investment under the TARP. In conducting
2 such study, the Commission shall examine—

3 “(i) how closely executive pay is cur-
4 rently linked to company performance;

5 “(ii) how closely executive pay has
6 been linked to company performance in the
7 past;

8 “(iii) how executive pay can be more
9 closely linked to company performance in
10 the future;

11 “(iv) the factors influencing executive
12 pay; and—

13 “(v) how current executive pay incen-
14 tives affect executive behavior.

15 “(B) CONSIDERATION OF PROPOSALS.—

16 The Commission shall consider, in addition to
17 any recommendations made by members of the
18 Commission or outside advisers, the effects of
19 implementing increased shareholder voice in ex-
20 ecutive compensation.

21 “(3) REPORT.—

22 “(A) IN GENERAL.—Not later than 90
23 days after the date on which all members of the
24 Commission have been appointed, the Commis-

1 sion shall deliver a report to the President and
2 to the Congress containing—

3 “(i) recommendations for legislative
4 action;

5 “(ii) recommendations for executive
6 action, including actions taken by the De-
7 partment of the Treasury or any other
8 agency for which the Commission has rec-
9 ommendations; and

10 “(iii) recommendations for voluntary
11 actions to be taken by recipients of a direct
12 capital investment under the TARP.

13 “(B) MINORITY VIEWS.—The report re-
14 quired under subparagraph (A) shall be accom-
15 panied by any separate recommendations that
16 members of the Commission wish to make, but
17 that were not agreed upon by the Commission
18 for purposes of the report required under sub-
19 paragraph (A). Such separate recommendations
20 must take the form of a proposal for aligning
21 executive pay with the long-term health of the
22 company.

23 “(4) COMPOSITION.—

24 “(A) The Commission shall be composed of
25 9 members, appointed as follows:

1 “(i) 1 member appointed by the Coun-
2 cil of Economic Advisers.

3 “(ii) 1 member appointed by the
4 Speaker of the House of Representatives.

5 “(iii) 1 member appointed by the Sen-
6 ate Majority Leader.

7 “(iv) 1 member appointed by the
8 House Minority Leader.

9 “(v) 1 member appointed by the Sen-
10 ate Minority Leader.

11 “(vi) 1 member appointed by the
12 Chairman of the Financial Services Com-
13 mittee of the House of Representatives.

14 “(vii) 1 member appointed by the
15 Ranking Member of the Financial Services
16 Committee of the House of Representa-
17 tives.

18 “(viii) 1 member appointed by the
19 Chairman of the Banking, Housing, and
20 Urban Affairs Committee of the Senate.

21 “(ix) 1 member appointed by the
22 Ranking Member of the Banking, Housing,
23 and Urban Affairs Committee of the Sen-
24 ate.

1 “(B) Each appointing entity shall name its
2 member within 21 days of the date of the en-
3 actment of this subsection.

4 “(C) Any vacancy in the Commission shall
5 be filled in the same manner as the original ap-
6 pointment.

7 “(5) ACTIVITIES.—

8 “(A) The Chairman of the Financial Serv-
9 ices Committee of the House of Representatives
10 shall select one member to serve as the Chair-
11 man of the Commission, and such Chairman
12 will call to order the first meeting of the Com-
13 mission within 10 business days after the date
14 on which all members of the Commission have
15 been appointed.

16 “(B) The Commission shall meet at least
17 once every 30 days and may meet more fre-
18 quently at the discretion of the Chairman.

19 “(C) The Commission shall solicit and con-
20 sider policy proposals from Members of Con-
21 gress, the financial sector, academia and other
22 fields as the Commission deems necessary.

23 “(D) The Commission shall hold at least
24 two public hearings, and may hold more at the
25 discretion of the Chairman.

1 “(6) ACTIONS BY THE COMMISSION.—A deci-
2 sion of a majority of commissioners present at a
3 meeting of the Commission shall constitute the deci-
4 sion of the Commission where the Commission is
5 given discretion to act, including but not limited to,
6 recommendations to be made in the report described
7 in paragraph 3.

8 “(7) STAFF.—The Chair may hire at his or her
9 discretion up to seven professional staff members.

10 “(8) TERMINATION.—The Commission shall
11 terminate 30 days after the date on which the Com-
12 mission submits its report to the President and the
13 Congress under paragraph 3.

14 “(9) AUTHORIZATION OF APPROPRIATIONS.—
15 There are authorized to be appropriated such sums
16 as may be necessary to carry out this subsection.



2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
Cardoza OF California, OR HIS
DESIGNEE, DEBATABLE FOR 10 MINUTES:

**AMENDMENT TO H.R. 1664, AS REPORTED
OFFERED BY MR. CARDOZA OF CALIFORNIA**

In subsection (e) of the matter proposed to be inserted by section 1(a), add at the end the following:

1 “(4) COMMUNITY FINANCIAL INSTITUTION EX-
2 EMPTION.—

3 “(A) IN GENERAL.—The Secretary may
4 exempt community financial institutions from
5 any of the requirements of this subsection,
6 when the Secretary finds that such an exemp-
7 tion is consistent with the purposes of this sub-
8 section.

9 “(B) COMMUNITY FINANCIAL INSTITUTION
10 DEFINED.—For the purposes of this paragraph,
11 the term ‘community financial institution’
12 means a financial institution that receives or re-
13 ceived a direct capital investment under the
14 Troubled Asset Relief Program under this title
15 of not more than \$250,000,000.”.



3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
Meeks OF New York, OR HIS
DESIGNEE, DEBATABLE FOR 10 MINUTES:

**AMENDMENT TO H.R. 1664, AS REPORTED
OFFERED BY MR. MEEKS OF NEW YORK**

In subsection (e)(1) of the matter proposed to be inserted by section 1(a)—

(1) strike “has received or receives a direct capital investment under the Troubled Assets Relief Program under this title” and insert “receives a direct capital investment under the Troubled Assets Relief Program under this title after the date of enactment of this subsection”; and

(2) strike “any existing compensation arrangement” and insert “any compensation arrangement other than a compensation arrangement entered into prior to the date of enactment of this subsection”.



4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
Bean OF Illinois, OR Her
DESIGNEE, DEBATABLE FOR 10 MINUTES:

AMENDMENT TO H.R. 1664, AS REPORTED
OFFERED BY MS. BEAN OF ILLINOIS

In subsection (e) of the matter proposed to be inserted by section 1(a) of the bill, redesignate paragraph (3) as paragraph (4) and insert after paragraph (2) the following:

1 “(3) CONDITIONAL EXEMPTION.—

2 “(A) REPAYMENT AGREEMENT.—Para-
3 graph (1) shall not apply to a financial institu-
4 tion that has entered into a comprehensive
5 agreement with the Secretary to repay the
6 United States, in accordance with a schedule
7 and terms established by the Secretary, all out-
8 standing amounts of any direct capital invest-
9 ment or investments received by such institu-
10 tion under this title.

11 “(B) DEFAULT.—If the Secretary deter-
12 mines that an institution that has entered into
13 an agreement as provided for in subparagraph
14 (A) has defaulted on such agreement, the Sec-
15 retary shall require that any compensation pay-
16 ments made by such institution that would have
17 been subject to paragraph (1) if the institution

1 had not entered into such an agreement be sur-
2 rendered to the Treasury.”.



5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
Bilirakis OF Florida, OR HIS
DESIGNEE, DEBATABLE FOR 10 MINUTES:

**AMENDMENT TO H.R. 1664, AS REPORTED
OFFERED BY MR. BILIRAKIS OF FLORIDA**

In subsection (e)(1) of the matter proposed to be inserted by section 1(a) of the bill, in the matter following subparagraph (B), strike "Provided that" and all that follows through "under the TARP" and insert "An institution shall not become subject to the requirements of this paragraph as a result of doing business with a recipient of a direct capital investment under the TARP or under the amendments made by the Housing and Economic Recovery Act of 2008".



6 AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
DeFazio OF Oregon, OR HIS
DESIGNEE, DEBATABLE FOR 10 MINUTES:

**AMENDMENT TO H.R. 1664, AS REPORTED
OFFERED BY MR. DEFAZIO OF OREGON**

At the end of the bill insert the following:

1 (c) SHAREHOLDER APPROVAL OF EXECUTIVE COM-
2 PENSATION.—Subsection (f)(2) of section 111 of the
3 Emergency Economic Stabilization Act of 2008 (12
4 U.S.C. 5221) is amended—

5 (1) by striking “shall not be binding” and in-
6 serting “shall be binding”; and

7 (2) by striking “and may not be construed” and
8 all that follows and inserting “and any compensation
9 payment arrangement not approved by such a vote
10 may not be entered into by the TARP recipient.”.



7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
DahlKemper OF Pennsylvania, OR Her
DESIGNEE, DEBATABLE FOR 10 MINUTES:

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**AMENDMENT TO H.R. 1664, AS REPORTED
OFFERED BY MS. DAHLKEMPER OF
PENNSYLVANIA**

In subsection (e)(1)(B), of the matter proposed to be inserted by section 1(a), insert after "payment" the following: ", whether payable before employment, during employment, or after termination of employment,".

In subsection (e), of the matter proposed to be inserted by section 1(a), add at the end the following new paragraph:

1 “(4) COMPENSATION CONSIDERATIONS UNDER
2 THE STANDARDS.—In establishing standards under
3 this subsection, the Secretary shall consider as com-
4 pensation any transfer of property, payment of
5 money, or provision of services by the financial insti-
6 tution that causes any increase in wealth on the part
7 of an executive or employee.”.

